58

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Criminal Revision No.511 of 2002

APPLICANT: Dwarka Prasad Rawat,
S/o Thakurdas Rawat,
Sub Engineer (under suspension),
Public Works Department,
Wadrafnagar, Distt. Sarguja,
Currently residing at Jail Road,
Tikamgarh (M.P.)

Versus

NON-APPLICANT: State of Chhattisgarh

POST FOR ORDER ON 27 February, 2003.

Sd/-
L.C.BHADOO
Judge

27 February, 2003

59

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Present:-

Shri Rakesh Anthony, Advocate — For the applicant
Miss Sharmila Singhai, Deputy G.A. — For the State / non-applicant

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Before: Hon'ble Shri L.C. Bhadoo, J.

ORDER

The accused / applicant being aggrieved of the order dated 26th July, 2002, passed in Special Sessions Trial No.1/98, by the Special Judge, Ambikapur, has preferred this criminal revision.

2. The relevant facts for the disposal of this criminal revision are that the accused / applicant is facing a criminal trial punishable for the offence under Section 13 (1) (e) read with Section 13(2) of the Prevention of Corruption Act, for having acquired property worth Rs.11,83,968/- disproportionate to his known sources of income. So far, the prosecution has examined in all 22 witnesses. An application on behalf of the accused / applicant was filed by his Advocate Ved Prakash Agrawal to the effect that the witnesses PW-5 - Rajesh Sahi, PW-6 - R.K. Lohar, PW-11 - A.K. Singh,

(60)

PW-16 - R.P. Sharma, PW-18 - Rasid Shibli, PW-20 - Ravindra Mishra and PW-22 - M.L. Meena have been examined by the prosecution, however, the previous Advocates namely, Mringendra Singh and R.C. Shukla could not cross examine these witnesses properly. These witnesses are material witnesses and they have deposed regarding the seizure from the house of the applicant, preparation of the inventory, valuation of the property seized from the house of the applicant, even though these witnesses have not been cross examined by the previous counsel about the valuation because the property has been over valued by inflating the cost. The defence of the accused / applicant is that the property has not been acquired by him during the assessment period through corrupt practices, the property has been wrongly shown to be acquired by him through corrupt practices and it does not belong to him and regarding valuation of the property, these witnesses have not been examined properly. Therefore, in the interest of justice, these witnesses be recalled for cross examination under Section 311 of the Cr.P.C. in order to set up the proper defence, otherwise, the applicant will suffer a great injustice.

3. I have heard the learned counsel for the parties and perused the record.

4. The learned counsel for the accused / applicant argued that these witnesses have not been cross examined on material points and in the absence of that, the accused / applicant will suffer a great loss as his defence has not been put forward correctly. In order to do justice and for just decision of the case and in the interest of the justice, it is necessary that these witnesses be recalled for further cross examination.

5. On the other hand, the learned Deputy Govt. Advocate argued that the accused / applicant has got fair opportunity and the witnesses have

(61)

been cross examined, therefore, there is no justification in recalling these witnesses.

6. I have perused the impugned order in which the learned Special Judge has observed that these witnesses have been cross examined by Shri R.C. Shukla and Shri Mrigendra Singh, Advocates, in detail and only because the accused / applicant has changed the counsel, the witnesses cannot be called again and again and he dismissed the application. The certified copies of the statement of these witnesses are available on the record of this file and I had the occasion to peruse them and after perusing the same, I am of the opinion that the point raised by the learned counsel for the accused / applicant is fair and reasonable to a great extent and these witnesses have not been cross examined properly. Now, coming to the question as to whether these witnesses should be recalled or not, the discretionary power is given to the Court to examine any witness who is present in the Court or to summon any witness or recall and re-examine any person already examined. This power has been given to the Court with a view to arrive at the truth and for just decision of the case. The object of this Section is to arrive at the truth irrespective of the fact that the prosecution or defence has failed to produce some evidence which is necessary for a just and fair decision of the case. A paramount consideration in incorporating this provision is for doing the justice to the case. The Court can examine the witness at any stage whenever it considers the evidence essential and a wide discretionary power has been given to the Court to take decision after going through the facts and circumstances of the case.

7. If we look into the facts of the present case, it is true that the accused / applicant is facing very serious charges regarding the

acquisition of property disproportionate to his known sources of income. It is a very technical case, unless the concerned witnesses and some of them regarding the valuation of property are not cross examined on the material points, then, there are chances of injustice to the accused / applicant. For example, PW-6 has made assessment for valuation of the house, no question has been asked regarding the expertise and specialization in the field and further, no question has been asked about the quality of the construction. Similarly, PW-8 - P.K. Naik, regarding the seizure of the ornaments, has not been cross examined on the point of valuation of these articles. PW-13 is a gold smith who made the valuation of the ornaments has not been cross examined regarding the valuation of the ornaments. PW-16 - R.P. Sharma who raided the house and prepared the inventory, in which the valuation of the property was made, has not been properly cross examined, which is in all probability going to cause prejudice to the accused / applicant. It is true that the opportunity to cross examine these witnesses was given to the learned counsel for the accused / applicant and he cross examined them, but unfortunately, these witnesses were not cross examined in a right manner and the accused / applicant is facing very serious charges. The Court has to be considerate so that no injustice should be caused to the accused / applicant on account of lapse by the counsel. While rejecting the application, the learned trial Court has given one reason that the counsel for the accused / applicant has got the opportunity and has cross examined at length, therefore the witnesses cannot be called again and again. In view of what has been mentioned above, the observation of the Court that the witnesses have been cross examined at length is not correct.

8. In the given situation, I am of the opinion that in order to reach at a right conclusion and in order to ascertain the truth and veracity

(63)

of the statements of these witnesses as well as in order to decide the points raised by the accused / applicant, it is necessary that an opportunity must be given to the Advocate for the accused / applicant to cross examine these witnesses on those points. Therefore, I am of the opinion that this is a fit case in which the power under Section 311 of the Cr.P.C. should be exercised in order to do the justice in the matter. However, since the opportunity was given to the counsel for the accused / applicant, he could not utilize it properly and the witnesses are to be recalled, therefore, the State should not suffer any loss on account of the lapse caused by the counsel for the accused / applicant, it would be appropriate if the Travelling Allowance, Dearness Allowance and also the salary for those days on which these witnesses come for the evidence should be paid by the accused / applicant. In view of what have been discussed above and in view of the request of the counsel for the accused / applicant made before this Court, it is ordered that the witnesses namely, PW-6 - R.K. Lohar, PW-11 - A.K. Singh, PW-16 - R.P. Sharma, PW-18 - Rasid Shibli, PW-20 - Ravindra Mishra and PW-22 - M.L. Meena be recalled for further cross examination by the learned counsel for the accused / applicant. It is further directed that these witnesses shall be recalled only on depositing the money by the accused / applicant before the trial Court to meet the expenses of for the Travelling Allowance, Dearness Allowance and salary of those days on which these witnesses will remain present in the Court. Therefore, the order of the trial Court dated 26th July, 2002, being not in conformity with the provisions contained in Section 311 of the Cr.P.C., the same is set aside and it is directed that on depositing the money as indicated above by the accused / applicant these six witnesses be recalled for further cross examination by the counsel for the accused / applicant. If the money is not deposited by the accused /

(69)

applicant within seven days from the date of the order of the trial Court, then these witnesses should not be recalled.

9. Consequently, M.(Cr.)P.No.4157/2002 stands disposed of.

Sd/-
L.C.BHADOO
Judge

28 February, 2003

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